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COMMITTEE ON THE RIGHTS OF THE CHILD

First session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 October 1991, at 10 a.m.

Chairman: Mrs. BADRAN

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The meeting was called to order at 10.25 a.m.

ADOPTION OF THE RULES OF PROCEDURE (agenda item 4) (continued) (CRC/C/L.1)

Rule 37

1. The CHAIRMAN, drawing attention to the amendments made to rule 37, said that, in paragraph 1, the word "formal" had been deleted. In the fourth line of paragraph 2, the words "rule 69" had been replaced by the words "rule 70" and the words "and to other participants in the meeting" should be added at the end of the sentence. In paragraph 3, the words "rules 65 and 68" should be replaced by the words "rules 66 and 69".

2. Mr. O'DONNELL (Defense for Children International Movement) said he understood paragraph 2 to mean that reports and information furnished to the Committee by non-governmental organizations would not be distributed to other competent bodies participating in the work of the Committee, would not be regarded as official documents and would not be translated into the working languages of the Committee.

3. His organization would like to have access to the documents submitted by United Nations organs and other competent bodies, unless, for some particular reason, they had been classified as confidential in exceptional cases. Since non-governmental organizations and other competent bodies would submit documents to the Committee at its invitation, it would be logical for such papers to be considered official documents and to be translated into the working languages.

4. It would create a great burden on individual members of the Committee if documents were submitted by NGOs and other competent bodies in languages understood only by one or a few of them. Documents which had not been requested or were too lengthy could be circulated unofficially. It would be unrealistic to expect that NGOs, which had limited resources, would be able to translate their documents into all the working languages.

5. He drew attention to a precedent set by the Committee on Economic and Social Rights, which had documents from competent bodies, including NGOs, translated for the benefit of all its members. It should be noted that the competent bodies were a valuable source of information and advice on general topics and on specific issues. In his opinion, the Committee would be unduly restricting its ability to have the benefit of such information under rule 37 as it stood at the present time.

6. Mrs. KLEIN (Representative of the Secretary-General), replying to a question by Mr. HAMMARBERG, said that, with the exception of the Committee on Economic and Social Rights and the Committee against Torture, the human rights treaty bodies had no official provision concerning documentation from non-governmental organizations. They received a number of documents in connection with their consideration of the reports of States parties, but such documentation was not translated and was merely distributed to their members.

7. The Committee on Economic and Social Rights had a provision in its rules of procedure under which NGOs in consultative status with the Economic and Social Council could submit to it written statements that might contribute to the full and universal recognition and realization of the rights contained in the Covenant. The written statements of the non-governmental organizations submitted to that Committee were translated into its working languages.

8. The Committee against Torture had a similar provision in its rules of procedure stating that it might invite specialized agencies, the United Nations bodies concerned, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention. Under that provision, the Committee would determine the form and the manner in which such information, documentation and written statements might be made available to its members. A decision was therefore made in each individual case on the manner in which to proceed. Where the information received was bulky, it would not be possible to translate it into the working languages. However, there might be times when it would be desirable to have the information translated into the working languages.

9. Mr. HAMMARBERG said that the question required further consideration and he therefore suggested that the Committee should defer a decision on the wording of rule 37, paragraph 2.

10. It was so decided.

MATTERS RELATING TO THE COMMITTEE'S METHODS OF WORK IN RESPECT OF THE CONSIDERATION OF REPORTS TO BE SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLE 44 OF THE CONVENTION (agenda item 7) (continued)

11. The CHAIRMAN invited the Committee to consider the draft general guidelines for initial reports as reformulated by the Drafting Group.

12. Mrs. KLEIN (Representative of the Secretary-General), replying to a point raised by Mr. HAMMARBERG, said that the secretariat would send a note verbale prepared by the Secretary-General, transmitting the guidelines to the States parties concerned and informing them that their initial reports would be due on a certain date. A brief description of the introduction to the guidelines could be included in the note verbale.

Paragraphs 1 to 3

13. The CHAIRMAN invited the Committee to consider paragraphs 1 to 3, which read:

"Introduction

1. Article 44, paragraph 1, of the Convention on the Rights of the Child provides that 'States parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the

measures they have adopted which give effect to the rights recognized therein and on the progress made in the enjoyment of those rights:

(a) Within two years of entry into force of the Convention for the State party concerned;

(b) Thereafter every five years'.

2. Article 44 of the Convention further provides, in paragraph 2, that reports submitted to the Committee on the Rights of the Child shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations under the Convention and shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. The Committee considers that reporting is not merely a procedural matter designed to satisfy a State party's obligation under article 44 of the Convention. Rather, it believes strongly that the process of preparing a report for submission to the Committee should be regarded by States parties as offering a particularly important occasion for conducting a comprehensive review of the various measures undertaken to harmonize national law and policy with the Convention and to monitor progress made in the enjoyment of the rights set forth in the Convention. Additionally, the process should be one that encourages and facilitates popular participation and public scrutiny of Government policies."

14. Mrs. EUFEMIO, referring to paragraph 3, proposed that the words "not merely a procedural matter" in the first sentence should be deleted, since a State party might regard them as insulting.

15. The CHAIRMAN said that, if she heard no objection, she would take it that the Committee adopted the proposal by Mrs. Eufemio.

16. It was so decided.

17. The CHAIRMAN suggested that, in view of the amendment to the first sentence, the beginning of the second sentence should read: "It also believes strongly that the process ...".

18. It was so decided.

19. Mr. HAMMARBERG said that all members agreed on the substance of the paragraph, but he found its tone rather didactic and wondered how it would be received by States parties. He thought that it should be redrafted in a different tone.

20. The CHAIRMAN suggested that Mr. Hammarberg and Mr. Kolosov should be entrusted with the task of redrafting the paragraph.

21. It was so decided.

Paragraphs 4 to 11

22. The CHAIRMAN invited the Committee to consider paragraphs 4 to 11, which read:

"4. The Committee considers that the reporting process entails an ongoing reaffirmation by States parties of their commitment to respect and ensure observance of the rights set forth in the Convention and serves as the essential vehicle for the establishment of a meaningful dialogue between the States parties and the Committee.

5. The general part of States parties reports, relating to matters that are of interest to monitoring bodies under various international human rights instruments, should be prepared in accordance with the 'Consolidated guidelines for the initial part of the reports of States parties', as contained in document HR1/1991/1. The present guidelines, which were adopted by the Committee on the Rights of the Child at its ... meeting (first session) held on ... October 1991, should be followed in the preparation of the initial reports of States parties relating to the implementation of the Convention on the Rights of the Child.

6. The Committee intends to formulate guidelines for the preparation of periodic reports that are to be submitted pursuant to article 44, paragraph 1 (b), of the Convention in due course.

7. Reports should be accompanied by copies of the principal legislative and other texts as well as detailed statistical information and indicators referred to therein, which will be made available to members of the Committee. It should be noted, however, that for reasons of economy they will not be translated or reproduced for general distribution. It is desirable, therefore, that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to those texts.

8. The provisions of the Convention have been grouped under different sections, equal importance being attached to all the rights recognized by the Convention.

General measures of implementation

9. Under this section, States parties are requested to provide relevant information pursuant to article 4 of the Convention, including information on:

(a) The measures taken to harmonize national law and policy with the provisions of the Convention; and

(b) Existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.

10. In addition, States parties are requested to describe the measures that have been taken or are foreseen, pursuant to article 42 of the Convention, to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

11. States parties are also requested to describe those measures undertaken or foreseen, pursuant to article 44, paragraph 6, of the Convention, to make their reports widely available to the public at large in their own countries."

23. Paragraphs 4 to 11 were adopted.

Paragraph 12

24. The CHAIRMAN invited the Committee to consider paragraph 12, which read:

"Definition of the child

12. Under this section, States parties are requested to provide relevant information, pursuant to article 1 of the Convention, concerning the definition of a child under their laws and regulations. In particular, States parties are requested to provide information on the age of attainment of majority and on the legal minimum ages established for various purposes, including: legal or medical counselling without parental consent, end of compulsory education, part-time employment, full-time employment, hazardous employment, sexual consent, marriage, voluntary enlistment into the armed forces, conscription into the armed forces, voluntarily giving testimony in court, criminal liability, deprivation of liberty, imprisonment and consumption of alcohol or other controlled substances."

25. Mr. KOLOSOV, replying to a point raised by Mrs. EUFEMIO, proposed that the words "inter alia" should be inserted after the word "including" in the second sentence.

26. It was so decided.

27. Paragraph 12, as amended, was adopted.

Paragraph 13

28. The CHAIRMAN invited the Committee to consider paragraph 13, which read:

"General principles

13. Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention and implementation priorities and specific goals for the future should be provided in respect of:

(a) Non-discrimination (article 2);

(b) Best interests of the child (article 3);

(c) The right of a child to express his or her views (article 12)."

29. Miss MASON said that the general principles should contain a reference to article 6 of the Convention.

30. The CHAIRMAN drew attention to paragraph 15 (a) of the guidelines.

31. Mr. HAMMARBERG said that the Drafting Group had discussed the matter and decided that it was not the Committee's task to give priority to one right or another or to establish fundamental principles. It had included as general principles those rights which, in its view, applied in all areas; non-discrimination, for example, applied in education, health and other fields.

32. Miss MASON said she considered that the right to life pervaded the entire Convention.

33. Mrs. EUFEMIO said she agreed with Miss Mason that article 6 as a whole was inextricably linked with all other provisions of the Convention.

34. Mr. KOLOSOV said that, as the Convention itself did not contain a definition of the child, the Drafting Group had considered that including the right to life as a general principle in the guidelines might give rise to problems. There was no common definition of when a child's life began; from the legislative point of view, in some countries, life started when a child was born, whereas, in others, it started at a specified time prior to birth.

35. Mrs. EUFEMIO said that, despite differences in different countries, there were legal provisions which had to be respected. Reports by States parties might therefore include information on the existence and implementation of such provisions. The right to life was more than a civil or political right.

36. Mr. KOLOSOV suggested that a solution might be to amend the title to read: "General approaches". He did not think that the Committee should interpret the articles of the Convention by structuring rights according to those it considered most important.

37. Miss MASON said that, if no reference was made to the right to life in paragraph 13, subparagraph (c), which read "The right of the child to express his or her views (article 12)", should be moved to paragraph 15.

38. Mr. KOLOSOV said that he supported Miss Mason's suggestion. Whereas a child's right to life might be considered to be in the same category as the best interests of the child, the right of a child to express his views was less categorical in that it depended on the age and maturity of the child, as well as on his situation, and it was therefore not relevant to every aspect of the Convention. In that connection, he suggested that the words "in respect of" should be replaced by the words "in the light of" so that paragraph 13 would make it clear that a general approach was being proposed for the preparation of reports of States parties and that all other principles should be viewed in the light of such general principles.

39. Mr. HAMMARBERG said that the current discussion contained elements relating to the interpretation of the Convention and that the members of the Committee appeared to have different views on the importance of article 12, in particular. For him, it was an essential feature of the Convention. While a child's right to express his or her views depended on his age, that was none the less an important aspect of the Convention because it meant that the child was considered as a subject, not as an object. That adult society should listen to the child was fundamental to the child's rights.

40. Mrs. EUFEMIO said that she supported Mr. Kolosov's view that the right of a child to express his or her views began at a certain age and could not be a general principle in itself. Article 6 of the Convention dealt not only with the right to life, but also with the right to the survival and development of the child or, in other words, with the process by which a child attained maturity. It should therefore be a general principle.

41. Miss MASON said she also strongly believed that article 6 should be referred to as a general principle, since it pervaded the Convention. The right of a child to express his or her views could not be realized until the child had reached a certain age.

42. Mr. KOLOSOV said he agreed with Mrs. Eufemio and Miss Mason that the right to life should be included as a general principle.

43. Mrs. BELEMBAOGO proposed a compromise solution: the title, "General principles", should be retained. Subparagraph (c) on the right of a child to express his or her views should also be retained. Although that right could not be exercised by very young children, it could be relevant in the contexts of child care and adoption, inter alia. Lastly, a new subparagraph should be added, to read: "(d) The right to life (article 6, para. 2)".

44. Mrs. EUFEMIO said that subparagraph (c) should read: "The right of a child to self-expression".

45. Mr. HAMMARBERG said he agreed that the wording of subparagraph (c) should be revised so that it would be more in line with article 12, which essentially covered the child's right to express his or her views. Subparagraph (d) should also be revised to include a reference to the right of survival and development mentioned in article 6, paragraph 2, of the Convention.

46. Mr. KOLOSOV said that Mrs. Eufemio's formulation of subparagraph (c) covered much more ground than article 12 did. The right to self-expression included the ability not only to make one's opinion known, but also to express oneself through cultural activities, the enjoyment of the right to freedom of association, and in other ways. He proposed that subparagraphs (c) and (d) should be inverted, in conformity with the order in which the subjects were dealt with in the Convention.

47. Mr. HAMMARBERG said that he endorsed the proposal for the inversion of subparagraphs (c) and (d).

48. The Committee might do well to set aside some time in future for an in-depth discussion of article 12 on the basis of the travaux préparatoires. Particular attention should be paid to the reference not only to freedom of expression, but also to the "views of the child being given due weight".

49. The CHAIRMAN suggested that, in the light of the discussion, the title of paragraph 13, "General principles", should remain unchanged. Subparagraph (c) would read: "The right to life, survival and development (article 6)". A new subparagraph would be added, to read: "(d) The right of a child to express his or her views to be taken into account (article 12)".

50. It was so decided.

51. Paragraph 13, as amended, was adopted.

Paragraph 14

52. The CHAIRMAN invited the Committee to consider paragraph 14, which read: "In addition, States parties are encouraged to provide relevant information on the application of these principles, as appropriate, in the implementation of articles listed elsewhere in these guidelines".

53. Mr. HAMMARBERG proposed that the words "as appropriate" should be deleted because they weakened the text.

54. It was so decided.

55. Paragraph 14, as amended, was adopted.

Paragraph 15

56. The CHAIRMAN said that, as a result of the revision of paragraph 13, the reference to the right to life in paragraph 15 (a) should be deleted. The paragraph would now read:

"Civil rights and freedoms

15. Under this section, States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention and implementation priorities and specific goals for the future in respect of:

(a) Name and nationality (article 7);

(b) Preservation of identity (article 8);

(c) Freedom of expression (article 13);

(d) Access to appropriate information (article 17);

(e) Freedom of thought, conscience and religion (article 14);

(f) Freedom of association and of peaceful assembly (article 15);

(g) Protection of privacy (article 16).

57. Paragraph 15, as amended, was adopted.

Paragraph 16

58. The CHAIRMAN invited the Committee to consider paragraph 16, which read:

"Family environment and alternative care

16. Under this section, States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the 'best interests of the child' and 'the right of a child to express his or her views' are reflected therein, factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention and implementation priorities and specific goals for the future in respect of:

(a) Parental guidance (article 5);

(b) Parental responsibilities (article 18, paras. 1-2);

(c) Separation from parents (article 9);

(d) Family reunification (article 10);

(e) Recovery of maintenance for the child (article 27, para. 4);

(f) Children deprived of a family environment (article 20);

(g) Adoption (article 21);

(h) Illicit transfer and non-return (article 11);

(i) Abuse and neglect (article 19), including rehabilitative care (article 39);

(j) Periodic review of placement (article 25)."

59. Mr. O'DONNELL (Defense for Children International Movement) said that one of the most important aspects of the Convention was its emphasis on the obligation of society and the State to support the family as the basic unit of society. Paragraph 16 did not sufficiently emphasize that financial obligation, however. It would also be preferable to separate references to normal family life from the questions of abuse and neglect, the removal of children from families and the care of such children.

21. Under this section, States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms, and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

(a) Education, including vocational training and guidance (article 28);

(b) Aims of education (article 29);

(c) Leisure, recreation and cultural activities (article 31).

22. In addition to information provided under paragraph 9 (b) of these guidelines, States parties are requested to specify the nature and extent of cooperation with local and national organizations, of a governmental or non-governmental nature, such as institutions of social workers, concerning the implementation of this area of the Convention. States parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section."

63. Paragraphs 17 to 22 were adopted.

Paragraph 23

64. The CHAIRMAN invited the Committee to consider paragraph 23, which read:

"Special protection measures

23. Under this section, States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention and implementation priorities and specific goals for the future in respect of:

(a) Children in situations of emergency

(i) Refugee children (article 22);

(ii) Children in armed conflicts (article 38), including rehabilitative care (article 39).

(b) Children in conflict with the law

(i) The administration of juvenile justice (article 40);

(ii) Children deprived of their liberty, in particular, children in prison (article 37), including rehabilitative care (article 39).

(c) Children in situations of exploitation, including rehabilitative care (article 39)

(i) Economic exploitation, including child labour (article 32);

(ii) Drug abuse (article 33);

(iii) Sexual exploitation (article 34);

(iv) Other forms of exploitation (article 36);

(v) Sale, trafficking and abduction (article 35).

(d) Children belonging to a minority or an indigenous group (article 30)."

65. Mr. O'DONNELL (Defense for Children International Movement) drew attention to two problems with regard to the wording of subparagraph (b) (ii). First, the reference to "children in prison" was unfortunate in that the term "prison" was usually understood as being a penal institution for adults. It might therefore be interpreted as meaning that it was normal for children to be in prison. Secondly, the reference to article 39 was out of place, since the drafting history of the Convention showed that article 39 was intended to apply not to children institutionalized for anti-social behaviour, but to children under other forms of care. As was also the case for paragraph 12 and as the secretariat well knew, terms such as "imprisonment" and "criminal liability" were likely to lead to misinterpretation by States parties.

66. Mr. BRUNI (Secretary of the Committee), noting that there had been a lengthy discussion in the Drafting Group concerning children in prison, said that "Children deprived of their liberty" was a general term that covered all forms of detention.

67. Mr. HAMMARBERG recalled that the members of the Drafting Group had shared Mr. O'Donnell's concern. However, they had also felt that the imprisonment of children was so serious a matter that, if such cases did exist in a country, that fact should be brought out into the open.

68. Mr. MILJETEIG-OLSSEN (UNICEF) said that he was uncomfortable with the connection being established between article 39 and children in conflict with the law, for, in his view, article 39 did not cover any issues relevant to that heading. He also suggested that the words "rehabilitative care" should be replaced by wording more in keeping with that of article 39. Those words did not appear in article 39 precisely because, after a lengthy discussion, the drafters of the Convention had chosen to avoid them.

69. Mrs. EUFEMIO, proposed that, in subparagraphs (a) (ii), (b) (ii) and (c), the words "rehabilitative care" should be replaced by the expression used in article 39, namely, "physical and psychological recovery and social reintegration".

70. It was so decided.

71. Mr. HAMMARBERG proposed that subparagraph (b) (ii) should be redrafted to read: "Children deprived of their liberty, including children confined in institutions of any kind." That would improve the text, since prison was only one type of institution in which children could be confined.

72. Mr. KOLOSOV said that he disagreed with Mr. Hammarberg's proposal. Although, ideally, no one under 18 years of age should be imprisoned, reality was often quite different, as article 37 of the Convention acknowledged. Statistical information on the implementation of article 37 was therefore very important with regard to many countries and the Committee should be interested in receiving it. That did not in any way imply that the Committee commended Governments for imprisoning children.

73. Mrs. EUFEMIO pointed out that the words "institutions of any kind" might be misinterpreted as applying to institutions that did not deprive children of their liberty, such as child-care institutions.

74. Mrs. BELEMBAOGO said that she agreed with the views of the two previous speakers. She also noted that many countries whose legislation required them to separate detained children from detained adults were unable to do so in practice because of a lack of structures for dealing with youthful offenders. The purpose of subparagraph (b) (ii) was thus not to regularize that situation, but to obtain further information concerning it. However, to meet the concern expressed by the representative of Defense for Children International Movement, it might be preferable to speak not of "children in prison", but of "children in situations of imprisonment" or "detained children".

75. Mr. HAMMARBERG said that Mrs. Belembaogo had raised an important point: the Committee had overlooked the emphasis in article 37 on separating detained children from adult prisoners. He proposed that Mrs. Belembaogo should redraft subparagraph (b) (ii) so that the Committee might discuss it at its next meeting.

76. It was so decided.

The meeting rose at 1 p.m.